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HUMAN RIGHTS COMMITTEE
Seventy-third session
15 October-2 November 2001

VIEWS

Communication No. 788/1997

Submitted by:	Messrs. Geniuval M. Cagas, Wilson Butin and Julio Astillero (represented by Crusade against Miscarriage of Justice, Inc.)
Alleged victims:	The authors
State party:	The Philippines
Date of communication:	17 September 1996 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 20 January 1998 (not issued in document form)
Date of adoption of Views:	23 October 2001

On 23 October 2001 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 788/1997. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4 OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Seventy-third session

concerning

Communication No. 788/1997*

Submitted by:	Messrs. Geniuval M. Cagas, Wilson Butin and Julio Astillero (represented by Crusade against Miscarriage of Justice, Inc.)
Alleged victims:	The authors
State party:	The Philippines
Date of communication:	17 September 1996 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on: 23 October 2001

Having concluded its consideration of communication No. 788/1997, submitted to the Human Rights Committee by Messrs. Geniuval M. Cagas, Wilson Butin and Julio Astillero under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

The text of two individual opinions signed by three Committee members: Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada and Mr. Hipólito Solari Yrigoyen, are appended to the present document.

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication, dated 17 September 1996, are Mr. Geniuval M. Cagas, Mr. Wilson Butin and Mr. Julio Astillero, all citizens of the Philippines and currently detained in Tinangis Jail and Penal Farm, Philippines. They claim to be victims of a violation by the Philippines of article 14 (2) of the Covenant. They are represented by Crusade against Miscarriage of Justice, Inc., a non-governmental organization.

The facts as presented by the authors

2.1 On 23 June 1992, the police of Libmanan, Camarines Sur, Philippines, found the bodies of six women in the house of Dr. Dolores Arevalo, one of the victims. Their hands had been bound and their heads smashed.

2.2 Although there was no eyewitness to the actual killings, a neighbour, Mr. Publio Rili, claims to have seen four men entering the house of Dr. Arevalo during the evening of 22 June 1992. Mr. Rili later identified the three authors as being among the individuals he saw on the evening in question. Soon after the four men entered the house, the same witness heard "thudding sounds" emanating from the house of Dr. Arevalo. He then saw a car driving away from the premises.

2.3 During the same night, a policeman saw the car in question and wrote down its number plate. The investigation later revealed that the number plate was that of a car owned by Mr. Cagas. The two other co-accused and authors are Mr. Cagas' employees.

2.4 According to the investigation, Mr. Cagas was a supplier of medicines in a hospital where Dr. Arevalo was appointed Chief of Hospital sometime before the incident. It was also reported that Dr. Arevalo refused to purchase medical supplies from Mr. Cagas.

2.5 The prosecution submitted to the Court a certified copy of a telegram that had allegedly been sent by Mr. Cagas to Dr. Arevalo's husband, asking him to tell his wife, Dr. Arevalo, not to ask for rebates in medical supplies any longer.

2.6 The authors were arrested on 26, 29 and 30 June 1992, on suspicion of murder (the so-called Libmanan massacre). They claim that they are innocent.

2.7 On 14 August 1992, the authors appeared in Court and were ordered detained until the trial. On 11 November 1992, the authors filed a petition for bail and on 1 December 1992, they filed a motion to quash the arrest warrants. On 22 October 1993, the regional Trial Court refused to grant bail. On 12 October 1994, the Court of Appeals in Manila confirmed the Trial Court Order of 22 October 1993. A motion for reconsideration of the Court of Appeals' decision was dismissed on 20 February 1995. On 21 August 1995, the Supreme Court dismissed the authors' appeal against the Court of Appeals' decision.

2.8 On 5 June 1996, Mr. Cagas sent a letter on behalf of the authors to the Court Administrator of the Supreme Court, submitting additional facts in support of their claim that their right to bail had been wrongly denied.

2.9 On 26 July 1996, the Court Administrator replied to the authors that they were no longer entitled to raise issues that were not raised before the Supreme Court.

2.10 In a further submission of 29 May 1998, the authors allege that on 24 and 25 March 1997, one of them, Mr. Julio Astillero had been subjected to "alcohol torture or treatment"[1] by prison guards with the purpose to force him to become a "State witness". The alleged ill-treatment had been reported to Judge Martin Badong, the then presiding judge of the regional trial court, but the latter took no action in this respect.

The complaint

3.1 The authors alleged a violation of article 14 (2) of the Covenant. They claim that the order for pre-trial detention is based solely on circumstantial evidence, which is not sufficient to justify a denial of bail and that this order has not been properly reviewed by higher courts, which have refused to reconsider the facts as they were assessed by the trial judge.

3.2 The authors claim that, by rejecting their claim on 26 July 1996, the Court Administrator relied on a technicality rather than on the substance of the law, while the issue was related to fundamental constitutional rights.

3.3 The authors note that while the presumption of innocence is a principle embodied in the Philippine Constitution, accused who are denied bail are denied their right to presumption of innocence. They further contend that a denial of bail deprives them of adequate time and facilities to prepare their defence properly, which constitutes a breach of the principle of due process.

3.4 Although not expressly invoked by the authors, the facts as submitted raise issues under articles 9 (3) and 14 (3) of the Covenant in relation to the time that the authors have spent in pre-trial detention, and under articles 7 and 10 of the Covenant in relation to the alleged ill-treatment to which Mr. Julio Astillero was allegedly subjected on 24 and 25 March 1997.

Observations by the State party

4.1 In a submission dated 16 March 1998, the State party transmitted its observations on the merits of the case.

4.2 Emphasizing that the right to due process of law is the cornerstone of criminal prosecution in its jurisdiction, the State party considers that this principle is complied with as long as an accused has been heard by a competent court, prosecuted under the orderly process of law, and punished only after a judgement has been handed down in conformity with constitutional law.

4.3 The State party also points out that the right to bail can be denied whenever the charges are related to an offence punishable by "perpetual reclusion" and when the evidence is strong, an assessment that is left to the judge's discretion.

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[1] The authors do not explain in their communication what such a treatment entails.

4.4 In the present case, the State party is of the opinion that the authors, although they were denied bail, have not been denied the right to be presumed innocent, because only a full trial on the merits would allow to declare them guilty beyond reasonable doubt.

4.5 Moreover, the State party considers that, although pre-trial detention is a situation in which the authors might lack adequate time and facilities to prepare their defence, the principle of such a detention does not detract from the essence of due process of law as long as the elements of due process referred to in paragraph 4.2 are present.

4.6 The State party emphasizes that Mr. Cagas had admitted in his letter of 5 June 1996 to the Court Administrator that "the defect noted in the Order of [22 October 1993] was never raised in the certiorari that reached the Court of Appeals and the Supreme Court" and that Mr. Cagas admitted to have directly addressed his grievance to the Court Administrator. The State party notes in this respect that the Office of the Court Administrator is under the authority of the Supreme Court and is not in any manner involved in the adjudication of cases; it therefore lacks the competence to review decisions taken by the Supreme Court. The State party further indicates that the authors were duly represented by a prominent human rights attorney.

Comments by the authors

5.1 In a letter dated 29 May 1998, the authors submitted their comments on the observations of the State party.

5.2 The authors reiterate their claim that when bail is denied, the constitutional right of an accused to be presumed innocent is substantially impaired. Moreover, when an accused is detained before the trial, he lacks adequate time and facilities for the preparation of his defence, which eventually leads to the loss of substantive due process.

5.3 As a general rule, bail may be granted in all criminal proceedings. The only exception to this rule is when an accused is charged with a capital offence carrying a severe penalty and, most importantly, when the evidence against the accused is strong. This also requires that any exception to the right to bail must be adequately justified in the decision.

5.4 In the present case, the authors are of the opinion that the justification for the denial of bail is absent from the Order of the Trial Court of 22 October 1993. Moreover, they suggest that the requirement of strong evidence was not satisfied. In this regard, the authors note that the prosecution merely showed that they were suspects who might have committed the crime, basing their findings on circumstantial evidence. The authors consider that, in the absence of an eyewitness who saw the actual murders, circumstantial evidence presented in the case is not sufficient to prove that the authors were the perpetrators of the crime.

5.5 The authors also note that both the Court of Appeals and the Supreme Court have limited their consideration on a procedural aspect of the case, considering that the assessment of facts was at the trial judge's discretion, and have not addressed the issue of the right to bail by assessing the constitutional requirement of strong evidence to deny bail. The authors have

thereafter raised this issue with the Court Administrator, claiming that the latter has the power and duty to call the attention of trial judges when a travesty of justice is manifestly occurring within his jurisdiction.

5.6 In order to enable the Committee to take its decision in the light of all appropriate information, the authors also draw the attention of the Committee on the following latest developments:

- A motion for reinvestigation was denied on 20 May 1998.

- The original telegram allegedly sent by Mr. Cagas to Mrs. Arevalo's husband and primarily used by the prosecution to establish the motive for the crime was never produced and is apparently lost. The authors provide certificates according to which the original of this document cannot be found.

Further observations by the State party

6. The preceding comments were submitted to the State party on 30 October 1998. On 20 September 2000, another letter was sent to the State party inviting it to submit its observations on the merits of the case. By a note verbale of 2 October 2000, the State party informed the Committee that it did not wish to make any further comments on the case and referred to its previous submission of 16 March 1998.

Issues and proceedings before the Committee

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its Rules of Procedure, decide whether or not the complaint is admissible under the Optional Protocol to the Covenant.

7.2 Noting that the State party has not raised any objections to the admissibility of the communication, that the authors have exhausted all available domestic remedies and that the same matter is not being examined under another procedure of international investigation or settlement, the Committee declares the communication admissible.

7.3 With regard to the allegation of violation of article 14 (2), on account of the denial of bail, the Committee finds that this denial did not a priori affect the right of the authors to be presumed innocent. Nevertheless, the Committee is of the opinion that the excessive period of preventive detention, exceeding nine years, does affect the right to be presumed innocent and therefore reveals a violation of article 14 (2).

7.4 With regard to the issues raised under articles 9 (3) and 14 (3) of the Covenant, the Committee notes that, at the time of the submission of the communication, the authors had been detained for a period of more than four years, and had not yet been tried. The Committee further notes that, at the time of the adoption of the Committee's Views, the authors appear to have been detained without trial for a period in excess of nine years, which would seriously affect the fairness of the trial. Recalling its General Comment 8 according to which "pre-trial detention should be an exception and as short as possible, and noting that the State party has not provided

any explanation justifying such a long delay, the Committee considers that the period of pre-trial detention constitutes in the present case an unreasonable delay. The Committee therefore concludes that the facts before it reveal a violation of article 9 (3) of the Covenant. Furthermore, recalling the State party's obligation to ensure that an accused person be tried without undue delay, the Committee finds that the facts before it also reveal a violation of article 14 (3) (c) of the Covenant.

7.5 With regard to the allegations of ill-treatment suffered by Mr. Julio Astillero, the Committee notes that the allegations are very general in nature, and fail to describe the nature of the acts which were allegedly carried out. Thus, while the State party did not respond to the Committee's invitation to comment on the authors' submission of 29 May 1998, the Committee is of the opinion that the authors have not sufficiently substantiated that the rights of Mr. Astillero under articles 7 and 10 of the Covenant were violated.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 9 (3), 14 (2) and 14 (3) (c) of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendices

Individual opinion by Committee members Ms. Cecilia Medina Quiroga and Mr. Rafael Rivas Posada (dissenting)

In this case, the Committee has decided that the Philippines violated, to the detriment of Mr. Cagas, Mr. Butin and Mr. Astillero, articles 9 (3), 14 (2) and 14 (3) of the International Covenant on Civil and Political Rights. In this respect I concur with the majority vote, but I dissent from that vote in that I believe that the Committee should also have found that the State had violated article 14 (1) of the Covenant. I explain my reasons below:

(a) In the file before the Committee there is no indication that the three authors of the communication have been tried and have been convicted and sentenced to a custodial penalty. It may therefore be presumed that they have been deprived of their liberty for a period of nine years without a trial and without a conviction, since it was the responsibility of the State to inform the Committee about this matter, and this has not so far been done. This is a clear violation of articles 9 (3) and 14 (3) of the Covenant. It should be noted that such a lengthy deprivation of liberty can only be considered as equivalent to the serving of a sentence, in this case without a conviction to back it up. This, in my opinion, calls into question the State party's compliance with the provisions of article 9 (1) of the Covenant, which prohibits arbitrary detention.

(b) The fact that for so many years no trial has been held, apart from constituting a violation of article 14 (3), inevitably jeopardizes the production of evidence. This vitiates any trial of the authors that may possibly be held. Thus, for example, the possibility that the judgement may be based on statements by witnesses, made many years after the events occurred, places the accused in a situation of defencelessness, contrary to the guarantees granted by the Covenant. It is not possible for a trial for homicide or murder, whichever the case may be, held nine or more years after the events to be a "fair trial" in the terms established by article 14 (1).

(c) Lastly, through having allowed time to pass without providing the accused with due process as laid down by the Covenant, the State has not only violated article 14 (1) by omission, but has placed itself in a position where it will be impossible for it to comply with the Covenant in the future. Consequently, and in addition, I cannot agree with paragraph 9 of the Views of the majority. I consider that, in the present case, it is incumbent on the State to release the detainees immediately. Obviously, there is a State interest in criminal prosecution, but this prosecution can be carried out only within the limits permitted by international law. If the organs of criminal justice in a State are ineffective, the State must solve the problem in a manner other than that of infringing the guarantees of the accused.

(Signed): Cecilia Medina Quiroga

(Signed): Rafael Rivas Posada

Individual opinion of Committee member Mr. Hipólito Solari Yrigoyen (dissenting)

I base my dissenting vote, rejecting the majority vote concerning the violation of Covenant articles 7 and 10 suffered by the author Mr. Julio Astillero, on the following considerations:

In a communication of 29 May 1998, the authors stated that one of their number, Julio Astillero, had been subjected to torture on two occasions, on 24 and 25 March 1997. They called the kind of torture which he suffered "alcohol treatment" and named the principal perpetrator of this treatment as Marlon Argarin, who at that time was working as a prison guard at Tinangis Jail - Penal Farm in Pili, Camarines Sur region (Philippines), where they were being held. They further stated that the guard Argarin later became Chief of Security of the Operations Service and that in the practice of torture he enjoyed the complicity of other guards in the same prison where the events in question occurred. They also complained that the purpose of the torture inflicted on prisoner Astillero was to force him to become a "State witness".

In addition, the authors stated that a complaint concerning all these events was made before Judge Martín Badong, the President of the Court of First Instance, Branch 33, Pili, Camarines Sur region, who, according to them, took no action to investigate the complaint.

Although the authors did not explain what the so-called "alcohol treatment" consisted of, there is no doubt, in view of the complaint's terminology, which is consistent with the text of article 7 of the Covenant, that what was involved was torture or cruel, inhuman or degrading treatment or punishment, to which no one may be subjected. Since prisoner Astillero was deprived of his liberty and subjected to torture, he was not treated humanely or with the respect inherently due to the human individual.

The complaint about violation of articles 7 and 10 of the Covenant was fully substantiated by the following details:

(a) Dates on which the torture occurred;

(b) Place in which torture was perpetrated;

(c) Name of the alleged torturer;

(d) His job at the time of the torture;

(e) The post he later occupied;

(f) Existence of other accomplices;

(g) Jobs of the alleged accomplices;

(h) Specific reference to the complaint lodged about the torture;

(i) Name of the judge who received the complaint;

(j) Title of the judge;

(k) Precise identification of the court with which the complaint was lodged.

All these comments by the authors, linked to the complaint of torture, together with other types of comments, were brought to the attention of the State party on 30 October 1998. The State party remained silent in the face of these comments, a fact which, as the Committee has declared on other occasions, constitutes a lack of cooperation through non-compliance with its obligation under article 4 (2) of the Optional Protocol to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

The State party's lack of cooperation was, moreover, repeated when, in reply to a further request by the Committee of 20 September 2000, in a note verbale it again stated that it wished to make no further comment on the question, referring to its initial communication of 16 March 1998. The observations made by the State party in that communication in no way clarify the acts of torture complained of, since these acts were notified to the Committee after the submission of the State's observations.

Consequently, the Committee should take the authors' complaints into account and, on the basis of all the elements before it, consider that there has been a violation of articles 7 and 10 of the Covenant to the detriment of the prisoner Julio Astillero.

(Signed): Hipólito Solari Yrigoyen